APPENDIX A

MICHIGAN STATUTES ANNOTATED

7.1 MSA (Compiled Laws of Michigan 1948, 211.1)

"PROPERTY SUBJECT TO TAXATION. Section 1.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT, That all property, real and personal within the jurisdiction of this state, not expressly exempted, shall be subject to taxation.

7.81 MSA (Compiled Laws of Michigan 1948, 211.40)

"Notwithstanding any provisions in the charter of any city or village to the contrary, all taxes shall become a debt due to the township, city, village and county from the owner or person otherwise to be assessed on the tax day provided for in sections 2 and 13 of this act, and the amounts assessed on any interest in real property shall, on the first day of December, for state, county village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city or village, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. Each statement and receipt for taxes on real estate sent or given by any county, township, city or village treasurer shall contain a statement, which shall be printed, stamped or written thereon, setting forth the date of the commencement and ending of the

fiscal year of each taxing unit of government during which general taxes stated thereon will defray the costs of governmental services rendered thereby. And all personal taxes hereafter levied or assessed shall also be a first lien, prior, superior and paramount, on all personal property of such persons so assessed from and after the first day of December in each year for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city or village, and so remain until paid, which said tax liens shall take precedence over all other claims, encumbrances and liens upon said personal property whatsoever, whether created by chattel mortgage, title retaining contract, execution, or upon any other final process of a court, attachment, replevin, judgment or otherwise, and whether such liens, claims and encumbrances created by chattel mortgage, title retaining contract, execution or upon any other final process of a court, attachment, replevin, judgment or otherwise, become effective prior to the effective date of this act or subsequent thereto, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy such lien, except where such personal property is actually sold in the regular course of retail trade. The personal property taxes hereafter levied or assessed by any city or village shall be a first lien, prior, superior and paramount to any other claims, liens and encumbrances whatsoever upon the personal property assessed as herein provided, any provisions in the charter of such cities or villages to the contrary notwithstanding."

7.83 MSA (Compiled Laws of Michigan 1948, 211.42)

"The supervisor shall thereupon prepare a copy of the said assessment roll, with the taxes assessed as hereinbefore provided, and annex thereto a warrant signed by him, commanding the township or city treasurer to collect the several sums mentioned in the last column of such roll and to retain in his hand the amount receivable by law into the township treasury for the purpose therein specified, and to pay over to the county treasurer the amounts which shall have been collected for state and county purposes up to and including the tenth day of January next following, and to the treasurer of each school district the amounts which shall have been collected for such school district up to and including the tenth day of January next following, within 10 days thereafter, and notify the secretary or director of each school district the amount paid to the school district treasurer and the remainder of the amounts therein specified for said purposes, and account in full for all moneys received on or before the first day of March next following; and the said warrant shall authorize and command the treasurer, in case any person named in the assessment roll shall neglect or refuse to pay his tax, to levy the same by distress and sale of the goods and chattels of such person. The supervisor may make a new roll and warrant in case of the loss of the one originally given to the township treasurer; the copy of the roll with the warrant annexed, shall be known as 'the tax roll.'"

7.87 MSA (Compiled Laws of Michigan 1948, 211.44)

"On receiving such tax roll the township treasurer or other collector shall proceed to collect such taxes. The twonship treasurer or other collector shall mail to each taxpayer at his last known address on his tax

roll, on the receipt of such tax roll, a statement showing the description of the property against which the tax is levied, the assessed valuation of such property and the amount of the tax thereon. The expense of preparing and mailing such statement shall be paid from county, township, city or village funds, as the case may be. Failure to send or receive such notice shall not in any way prejudice the right to collect or enforce the payment of any tax. The township treasurer shall remain in his office at some convenient place in his township, village or city on every Friday in the month of December, thereafter, from 9:00 a.m. to 5:00 p.m. to receive taxes, but he shall receive taxes upon any week day when they may be offered. On all sums voluntarity paid before January 20 of the succeeding year, he shall add 1% for collection fees, and upon all taxes paid on or after January 20 he shall add 4%. If the treasurer shall not mail the statements hereinabove required to be mailed on or before December 30, he shall be limited to 1% for collection fees with respect to taxes collected by him on and after January 20. In townships in which the treasurer receives a salary, the township board may waive all or part of the 4% collection fee on taxes paid on or before February 15. All fees collected by the township treasurer in townships where the treasurer receives a salary shall be credited to the contingent fund of the township. When the bond of the treasurer, as provided in section 43, is furnished by a surety company, the cost of the bond shall be paid by the township from the contingent fund of the township. If the township treasurer is apprehensive of the loss of any personal tax assessed upon his roll, he may enforce its collection at any time, and if compelled to seize property or bring suit in December may add 4% for collection fees."

7.91 MSA (Compiled Laws of Michigan 1948, 211.47)

"If any person, firm or corporation shall neglect or refuse to pay any tax assessed to him or them, the township or city treasurer, as the case may be, shall collect the same by seizing the personal property of such person, firm or corporation, to an amount sufficient to pay such tax, fees and charges for subsequent sale, wherever the same may be found in the state, and from which seizure no property shall be exempt. He may sell the property seized to an amount sufficient to pay the taxes and all charges, in the place where seized, or in the township or city of which he is treasurer, at public auction, on giving public notice of the same at least five (5) days previous to the sale, by posting written or printed notices in three (3) public places in the township, village or city where the sale is to be made, which sale may be adjourned from time to time if he shall deem the same necessary; and in case property shall be seized and advertized as herein directed, during the life of the warrant, the sale may take place at any time within six (6) days after the expiration thereof. If it becomes necessary to sell personal property which brings more than the amount of taxes and charges, the balance shall be returned to the person, firm or corporation from whose possession the property was taken, except as hereinafter provided. If the property so distrained cannot be sold for want of bidders, and in such case only, the treasurer shall return a statement of the fact, and such tax shall be returned as unpaid. The township treasurer, if otherwise unable to collect a tax on personal property, may sue the person, firm or corporation to whom it is assessed, in the name of the township, village or city, and garnishee any debtor or debtors of such person, firm

or corporation. The tax roll shall be *prima facie* evidence of the debt sought to be recovered: Provided, That when any person having possession of the personal property of any other person, firm or corporation shall be assessed for such property and shall be obliged to pay the taxes thereon, such person, firm or corporation so paying the taxes, may recover of the person, firm or corporation for whose benefit the taxes were paid, the money so paid, with the interest thereon in an action of assumpsit: * * * "

Section 3466 Revised Statutes (31 USCA 191).

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

APPENDIX B

No. 17146

UNITED STATES COURT OF APPEALS
For the Sixth Circuit

United States of America, *Plaintiff-Appellee,* v. County of Wayne, *Defendant-Appellant.*	Appeal from the United States District Court for the Eastern District of Michigan.

Decided June 14, 1967.

Before: Weick, Chief Judge, O'Sullivan and Celebrezze, Circuit Judges.

Per Curiam. The question on appeal is whether a local tax lien, which is a general lien upon the taxpayer's personal property, is superior to the priority of the United States Government under Section 3466 of the Revised Statutes, where the local taxing authority has taken no action to attach its general lien to specific property of the taxpayer before the taxpayer becomes insolvent and his assets subject to a distribution for the benefit of his creditors.

The District Court granted the motion of the United States for summary judgment. We affirm for the reasons set forth in the District Court's opinion of October 7, 1965, and also the opinions of the Supreme Court of the United States in *Spokane County v. United States*, 279 U.S. 80; *New York v. Maclay*, 288 U.S. 290; *United States v. Texas*,

314 U.S. 480; *United States v. Waddill Co.*, 323 U.S. 353; *Illinois v. Campbell*, 329 U.S. 362; *United States v. Gilbert Associates*, 345 U.S. 361; *United States v. New Britain*, 347 U.S. 81; *United States v. Vermont*, 377 U.S. 351; *United States v. Equitable Life*, 384 U.S. 323.

Affirmed.

UNITED STATES COURT OF APPEALS
For the Sixth Circuit

No. 17,146

United States of America,
Plaintiff-Appellee,
v.
County of Wayne,
Defendant-Appellant.

Before: Weick, Chief Judge, O'Sullivan and Celebrezze, Circuit Judges.

JUDGMENT

Appeal from the United States District Court for the Eastern District of Michigan.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Michigan and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

No costs awarded. Rule 23(4).

Entered by order of the Court.

Carl W. Reuss,
Clerk.

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America, *Plaintiff,* v. Louis F. Davis, Trustee, Midwest Steel Fabricators, Inc., County of Wayne, Michigan Corporation and Securities Commission, Michigan Department of Revenue, Michigan Employment Security Commission, *Defendants.*	Civil No. 23847

OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

At a session of said court held in the Federal Building in the City of Detroit, Michigan, on October 7, 1965.

Present: The Honorable FRED W. KAESS, United States District Judge.

This is an action instituted by the United States of America to foreclose certain tax liens against a fund held by defendant Louis F. Davis, as Trustee, of assets of the defendant-taxpayer, Midwest Steel Fabricators, Inc., under a trust mortgage for the benefit of creditors of assets.

The trust mortgage was executed on April 29, 1961, for the purpose of completing existing contracts and liquidating the company. The Trustee carried out the contracts, realized profits, collected the accounts receivable and liquidated the assets by public auction. The total fund remaining after the payment of certain expenses was $13,034.97.[1] Tax claims in the amount of $24,066.10 were filed by various taxing authorities. By agreement, the Internal Revenue Service was paid $8,210.08 on a lien which all agreed was prior. In this action, the United States seeks to foreclose other tax liens against the remaining $4,824.89, by virtue of four tax assessments made against the Midwest Steel Fabricators, Inc., the pertinent facts of which are summarized as follows:

Period of tax	Date of Assessment	Amt. Outstanding on Original Assessment	Amt. Interest Accrued to 4–29–61
4Q 1959	2/26/60	$1,230.68	$90.86
4Q 1960	2/24/61	2,252.32	33.45
1Q 1961	6/ 2/61	3,660.42	0
2Q 1961	6/ 2/61	381.56	0

[1] At this time the Trustee paid $2,064.00 to the City of Detroit in full payment of 1960 and 1961 personal property taxes. The City had levied upon and seized the personal property of Midwest Steel Fabricators, Inc. on April 27, 1961 for failure to pay the 1960 personal property tax of $724.05, and on May 2, 1961 had recorded a jeopardy tax assessment affidavit, pursuant to Michigan Statutes Annotated Section 7.51(1)-7.51(7), which stated that a 1961 personal property tax in the amount of $1,509.92 had been levied and assessed upon the personal property of Midwest Steel Fabricators, Inc. On May 2, 1961, subsequent to the filing of this jeopardy affidavit, the City of Detroit released the property to the Trustee, on condition that he would sell it and pay the City in full. The City of Detroit moved to intervene in the instant case. The motion was denied, but the City was allowed to file a brief Amicus Curiae.

Other tax liens against this fund are:

Date of Lien	Taxing Authority	Amount of Lien
12/ 1/60	Wayne County .	$197.08
4/25/61	Michigan Employment Securities Comm.	914.23
5/ 3/61	Wayne County	247.88
5/15/61	Michigan Corporation & Securities Comm.	39.50
7/ 7/61	Michigan Dept of Revenue (2)	4195.34
7/25/61	Michigan Employment Security Comm.	235.27

The Trustee makes no claim on the fund and asks only that the Court determine the ownership thereof.

The United States filed a motion for a summary judgment on the ground that, as a matter of law, it is entitled to an award of the entire fund now before the Court, in partial satisfaction of its tax liens. In support of the motion it relies upon the statement of facts filed with the Court by defendant Trustee Davis and affidavits of the District Director of Internal Revenue.

Section 6321 of the Internal Revenue Code of 1954 creates a lien against all property or rights to property belonging to the taxpayer.[2] This lien attaches to the property on the date of assessment pursuant to Section 6322 of the Internal Revenue Code of 1954.[3]

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[2] Sec. 6321. LIEN FOR TAXES

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. (26 U.S.C. §6321)

[3] Sec. 6322. PERIOD OF LIEN

Unless another date is specifically fixed by law, the lien imposed by Section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed is satisfied or become unenforceable by reason of lapse of time. (26 U.S.C. §6322)

The Federal government claims $3,804.39 on a theory set forth in *United States v. City of New Britain*, 347 U.S. 81 (1954), that local tax liens compete with Federal tax liens on a first in time, first in right basis, the priority of each lien depending on the time it attached and became choate. Since a Federal lien arises on the date of assessment, following this principle the fund would be substantially used up by four of the claims in the following order:

	Amount	Lien Date
Internal Revenue Service	$1,321.54	2–26–60
Wayne County	197.08	12– 1–60
Internal Revenue Service	2,285.77	2–24–61
Michigan Employment Security Commission	941.23	4–25–61

All parties accept this principle and there is no dispute as to its application.

However, in addition to this theory of priority, the United States is also claiming a priority pursuant to Revised Statute §3466, 31 USC §191.[4] This Section provides that claims of the United States against any person who is insolvent have absolute priority. It is clear from the pleadings that Midwest Steel Fabricators, Inc. was insolvent at the time of the execution of the trust mortgage. This is not now disputed by the County, which is the only defendant actively contesting this motion.

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[4] "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

It has been held by state and lower Federal courts that the priority accorded by Section 3466 is not equivalent to a specific and perfected lien, *e.g. United States v. O'Dell,* 160 F.2d 304 (6th Cir. 1945); *New York v. United States,* 106 F.2d 210 (2d Cir. 1939); *United States v. South Carolina,* 227 S.C. 187, 87 S.E. 2d 577 (1955). Although the Supreme Court, in *United States v. Gilbert Associates,* 345 U.S. 361 (1953), remarked that it has never actually held that there is such an exception, the Federal government does not here contest its existence.

The County of Wayne asserts that it had a prior specific and perfected lien for unpaid *ad valorem* property taxes pursuant to local acts and the General Property Tax law of Michigan.[5] It argues that the liability of the taxpayer to the County arose prior to the assessment by the Federal government and that, although no physical possession of the assets subject to the County's lien were taken, under Section 7.81 Michigan Statutes Annotated, all taxes became a debt owed to and a lien in favor of the County on the tax day provided for in the law. The County relies upon the decision of the Michigan Supreme Court in *In re Ever Krisp Food Products Co.,* 307 Mich. 182, 11 N.W. 2d 852 (1943), which applied the judicial exception to the absolute priority rule and held that a lien is specific and perfected when nothing further need be done to perfect it. This decision was followed by the Court of Appeals for the Sixth Circuit in *United States v. O'Dell, supra.*

However, several years later, in *United States v. Gilbert Associates, supra,* the United States Supreme Court enunciated the test of specificity in the following language, at page 366:

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[5] Michigan Statutes Annotated §7-1 et seq.

"In claims of this type, 'specificity' requires that the lien be attached to certain property by reducing it to possession, on the theory that the United States has no claim against property no longer in the possession of the debtor. *Thelusson v. Smith,* 2 Wheat. 396. Until such possession, it remains a general lien. There is no ground for the contention here that the Town had perfected its lien by reducing the property to possession. The record reveals no such action. The mere attachment of the Town's lien before the recording of the federal lien does not, contrary to the holding of the Supreme Court of New Hampshire, give the Town priority over the United States. The taxpayer had not been divested by the Town of either title or possession. The Town, therefore, had only a general, unperfected lien. *United States v. Waddill Co., supra; Illinois v. Campbell,* 329 U.S. 362, 370. Where the lien of the Town and that of the Federal Government are both general, and the taxpayer is insolvent, §3466 clearly awards priority to the United States. *United States v. Texas,* 314 U.S. 480, 488."

Since the standard of specificity set forth in *United States v. Gilbert Associates, Inc., supra,* was not applied in *O'Dell* and *Ever-Krisp,* those decisions are not controlling here. *United States v. Leland Door Co.,* Civil Action No. 25208 (E.D. Mich. May 12, 1965).

It is asserted that the recent decision of the Supreme Court in *United States v. Vermont,* 377 U.S. 351 (1964) changes this result and holds that it is not necessary for the County to reduce the property of the taxpayer to its possession in order to have a specific and perfected lien. However, that case dealt with a solvent taxpayer, and the Court expressly differentiated it from the situation involving an insolvent taxpayer, quoting, at page 358, from the *City of New Britain* case:

"When the debtor is insolvent, Congress has expressly given priority to the payment of indebtedness owing the United States, whether secured by liens or otherwise, by §3466 of the Revised Statutes, 31 U.S.C. . . . §191. In that circumstance, where all the property of the debtor is involved, Congress has protected the federal revenues by imposing an absolute priority [citing *United States v. Gilbert Associates,* 345 U.S. 361; *United States v. Waddill, Holland & Flinn,* 323 U.S. 353]. Where the debtor is not insolvent, Congress has failed to expressly provide for federal priority . . . although the United States is free to pursue the whole of the debtor's property wherever situated." *United States v. New Britain,* 347 U.S. 81, 85."

In this instant case it is not disputed that while the County complied with the statutory requirements for a specific and perfected lien, it did not reduce the property of the insolvent taxpayer to possession. Thus, the lien of the County does not meet the standard of specificity set forth in *United States v. Gilbert Associates, supra.* Although the "first in time, first in right" policy, followed by the Internal Revenue Service for many years, seems to be the more equitable procedure, Section 3466, as interpreted by the United States Supreme Court, dictates otherwise and must be followed.

Therefore, it is ordered the motion of the United States for summary judgment is granted, and that of the County of Wayne is denied.

Fred W. Kaess,
United States District Judge.